

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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MEMORANDUM

April 13, 2017

To: Democratic Members of the Committee on Oversight and Government Reform

Fr: Democratic Staff

Re: Documents Obtained by Oversight Committee Refute Republican Claims That Obama Administration Did Not Consult on Bears Ears Monument Designation

On December 28, 2016, President Barack Obama exercised executive authority granted by Congress pursuant to the Antiquities Act to designate Bears Ears in Utah a national monument. Since that designation, various members of the Utah delegation have stated publicly that the Obama Administration failed to adequately consult with local stakeholders, native tribes, or Members of Congress during this process and that there was little local support for the designation.

On December 29, 2016, the day after President Obama's designation, Rep. Jason Chaffetz, the Chairman of the Committee on Oversight and Government Reform, sent a letter to Sally Jewell, the Secretary of the Department of the Interior, requesting by January 20, 2017, a wide range of documents relating to the designation decision. On January 17 and 18, 2017, the Department produced four disks containing 1,361 documents with a total of 11,104 pages in response to the Chairman's request.

These documents appear to contradict Republican claims and indicate that the Obama Administration engaged in a lengthy consultation process with the local stakeholders, tribes, and the Utah delegation.

I. REPUBLICAN CLAIMS OF INADEQUATE CONSULTATION

Utah Governor Gary Herbert has made the following statements regarding the Bears Ears monument designation process:

I am deeply disturbed by what has resulted from a troubling process. ... [T]he president has misused his authority under the Antiquities Act and violated assurances made by his Interior Secretary to take into account local concerns before making a monument designation.¹

¹ Utah Governor Gary Herbert, *Governor News and Media Page* (Dec. 28, 2016) (online

It is the problem of someone unilaterally making a decision without taking into account the positions and concerns of local people.²

Why did not the president and his administration work with Congressman Bishop and Congressman Chaffetz and say, let us help you? It's not the use of the Antiquities Act that's the problem. It's what seems to be a continued escalating abuse of the Antiquities Act ... And it's just a way to circumvent the people. It's a way to circumvent the Congress.³

This decision ignores the will of the majority of Utahns. It disregards the desire of Native American groups who count these lands as their heritage to co-manage this culturally important area. It overlooks the unanimous opposition of Utah's statewide elected officials and Utah's entire congressional delegation.⁴

The Speaker of the Utah House of Representatives, Greg Hughes, made a similar statement alleging a lack of outreach to local residents and tribes:

Not only is that clearly not the case here, but this administration has had no real conversations with those who will be affected by this designation, let alone any study of what "antiquities" they are attempting to protect.⁵

On January 5, 2017, Utah Senator Mike Lee stated in response to the Administration's claim that it took unprecedented steps to elevate the voices of Native peoples that "nothing could be further from the truth."⁶

at www.utah.gov/governor/news_media/article.html?article=20161228-1).

² *Native Americans Prepare to Battle Trump Over Utah National Monument*, McClatchy (Mar. 20, 2017) (online at www.mcclatchydc.com/news/politics-government/white-house/article139721783.html).

³ *All Things Considered*, NPR (Dec. 29, 2016) (online at www.npr.org/2016/12/29/507436648/obama-s-newly-designated-national-monuments-upset-some-lawmakers-and-constituent).

⁴ Utah Governor Gary Herbert, *Governor News and Media Page* (Dec. 28, 2016) (online at www.utah.gov/governor/news_media/article.html?article=20161228-1).

⁵ Utah House of Representatives, *Newsroom Page* (Dec. 28, 2016) (online at <https://house.utah.gov/2016/12/28/media-statement-speaker-greg-hughes-statement-about-bears-ears-national-monument-designation/>).

⁶ United States Senator Mike Lee, *Speeches Page* (Jan. 5, 2017) (online at www.lee.senate.gov/public/index.cfm/speeches?ID=94B2FF5E-B083-41F3-8AA2-39763E511C57).

II. DOCUMENTS OBTAINED BY THE OVERSIGHT COMMITTEE

The documents obtained by the Oversight Committee contradict Republican statements alleging inadequate input from local communities and instead demonstrate a lengthy process of consultation.

The documents show that the Department of the Interior consulted with the Utah delegation on an ongoing basis since 2013 and made continuous efforts to keep the lines of communication open. The documents also show that as late as December 21, 2016, the Governor's office complimented staff at the Department on the time and attention that they were devoting to this issue.

The documents also show that the Department provided specific feedback to the Utah congressional delegation in September 2016 on legislation being offered by Chairman Chaffetz and Rep. Rob Bishop, the Chairman of the House Committee on Natural Resources, known as the Public Lands Initiative (PLI), which had been the Utah delegation's alternative solution to this issue. Ultimately, the PLI was not considered by the House of Representatives.

Public statements by the Bears Ears Inter-Tribal Coalition, which is comprised of local tribe Uintah & Ouray Ute, as well as the Hopi, Ute Mountain, and Zuni Governments, underscore the PLI's flaws. On December 15, 2016, the Coalition issued the following statement:

Utah's elected officials had years to act to protect Bears Ears. Instead of attempting serious legislation, they stalled and blocked any real attempts at legislative progress. ... Utah's Governor and congressional delegation have stated they believe it is important to protect areas within the Bears Ears region, yet the failure of a good faith effort to pass sound legislation to provide the protections needed to safeguard the homelands of our ancestors belies those claims.⁷

The documents obtained by the Committee also demonstrate that many current and former locally elected officials and candidates supported a monument designation, including Gene Davis, the Utah State Senate Minority Leader. The documents include resolutions from local native tribes and community groups supporting the Bears Ears monument designation and opposing the legislation proposed by Chairmen Bishop and Chaffetz.

In addition, two polls conducted in Utah demonstrated broad support for a Bears Ears national monument designation. A May 2016 poll released by the Bears Ears Coalition found that 71% of Utah residents supported a national monument designation.⁸ An August Pew Charitable Trusts poll found that 55% of Utah residents supported a new national monument.⁹ In

⁷ Bears Ears Coalition, *News and Media Page* (Dec. 15, 2016) (online at www.bearscoalition.org/wp-content/uploads/2015/10/BEITC-response-to-PLI-failure-12-15-16.pdf).

⁸ Bears Ears Coalition, *News and Media Page* (May 17, 2016) (online at <https://bearscoalition.org/poll-71-of-utahns-support-bears-ears-national-monument/>).

⁹ Pew Charitable Trusts, *New Poll: Utahans Support Protections for Bears Ears Area*

addition, two local Utah tribes, the Ute Indian Tribe and the Oljato Chapter of the Navajo Nation, expressed public support for the monument designation.¹⁰

Key documents obtained by the Committee are set forth in the attachment to this memo.

(Aug. 11, 2016) (online at www.pewtrusts.org/en/research-and-analysis/analysis/2016/08/11/new-poll-utahans-support-protections-for-bears-ears-area).

¹⁰ Bears Ears Coalition, *Tribal Statements of Support Page* (July 14, 2015) (online at www.bearscoalition.org/wp-content/uploads/2015/03/Northern-Ute-letter.pdf); Utah Dine Bikeyah, *News Page* (Nov. 16, 2015) (online at <http://utahdinebikeyah.org/oljato-chapter-in-favor-of-bears-ears-designation/>).

ATTACHMENT
Documents Relating to Bears Ears Designation

- (1) An Internal Timeline of Events produced by the Department shows repeated contacts with Senator Hatch, Chairman Bishop, Chairman Chaffetz, and their staffs over four years since 2013, including meetings or calls with the Secretary in 2013, 2014, 2015, and 2016, as well as feedback in the form of technical assistance on their bill, the PLI.
- (2) Eleven emails from twelve weeks from August 2, 2016, to December 28, 2016, the day President Obama designated Bears Ears a National Monument, show the coordination of weekly phone calls between Department staff and staff from the offices of Chairman Bishop, Chairman Chaffetz, Senator Lee, Senator Hatch, and Governor Herbert.
- (3) On December 21, 2016, Governor Herbert's Policy Director sent an email to Nicole Buffa, Secretary Jewell's Deputy Chief of Staff, thanking her for her work on the Bears Ears project, writing: "Thanks again for all your time. I'm not kidding when I say you're an amazing example of a public servant. I have the utmost respect for you. Thank you for your time and attention."
- (4) On July 5, 2016, Nicole Buffa, the Deputy Chief of Staff to Secretary Jewell, sent an email to Senator Hatch's Deputy Legislative Director and others, writing: "As we talked about, SJ [Secretary Jewell] very much wants to travel to Utah to meet with local stakeholders, the tribes, local electeds, and the public to discuss conservation in southern Utah. ... During her visit, we'd like to have smaller meetings with PLI supporters in San Juan County. Would one of you be able to send me a list of folks we should be talking with? I'm open to any and all suggestions."
- (5) On July 18, 2016, Governor Herbert's Policy Director sent an email to Nicole Buffa, Secretary Jewell's Deputy Chief of Staff, complimenting the success of Secretary Jewell's visit to Utah, writing: "I have to compliment you on a wonderful trip. As I recently relayed to the Governor's Chief of Staff, your team orchestrated a comprehensive, balanced, well-run, and effective trip of southeast Utah. I also have to compliment you on the listening session on Saturday. We were worried it might get out of hand but it went off brilliantly. Kudos to you and your team!"
- (6) On September 2, 2016, Christopher P. Salotti, Legislative Counsel for the Office of Congressional and Legislative Affairs at the Department, sent a letter conveying technical assistance to Chairman Bishop and Chairman Chaffetz, writing: "In accordance with your July 20, 2016, request, the Department of the Interior has prepared the enclosed technical assistance on H.R. 5780, the Utah Public Lands Initiative. ... In addition to what is noted throughout the draft, the Department would like the opportunity to work with the bill sponsors on the individual boundary modifications both to improve manageability and ensure protection of natural, cultural, and other resources in those areas."
- (7) On July 31, 2016, Secretary Jewell sent a handwritten note to Governor Herbert, writing: "Many thanks for meeting with me at the airport before my visit to the counties in SE Utah. ... As you have read and heard from [the Governor's staff], the meetings were respectful and covered many different points of view. Spending time with [employees]

of SITLA [School and Institutional Trust Lands Administration] was very helpful in understanding the state's interest in land swaps and consolidation—we will continue to work with them. Please keep me informed if you still wish to have me visit the state with you in the fall. We are glad the PLI was finally released during my visit. My team is reviewing it carefully and will continue to work with the delegation. ... The different points of view weren't as far apart as people anticipated. These lands deserve further protection and resources—that was fairly universal.”

- (8) On September 13, 2016, a staffer to Senator Lee emailed Nicole Buffa, Deputy Chief of Staff to Secretary Jewell, writing: “Sorry for the late notice but Lee and Hatch are about to introduce a bill that would prohibit use of the Antiquities Act within Utah. Since it is looking like Congress, the hardest working institution in America, is going to get out of dodge next week, we may not have the opportunity to introduce PLI. The plan has always been to defer to Bishop, let him work and move PLI through the House, and then introduce in the Senate. With our new truncated calendar, that may not be possible. ... We are still reviewing your ta [technical assistance] and deciding how to proceed. Just wanted to keep you informed since you have been forthcoming with us.”
- (9) On September 13, 2016, an employee with the Utah School and Institutional Trust Lands Administration emailed staff at the Department of the Interior thanking them for meeting, writing: “We truly appreciate the amount of time your office has devoted to the school trust land issue.”
- (10) On July 30, 2016, Secretary Jewell sent a handwritten note to County of Emery Commissioners expressing her appreciation for their meeting, writing: “Thank you for hosting my recent visit and for sharing your work on land use planning for the county. ... I also appreciated the opportunity to better understand the process Emery County has undertaken as part of the Public Lands Initiative.”
- (11) On December 31, 2015, the Bears Ears Inter-Tribal Coalition, comprised of local tribe Uintah & Ouray Ute, as well as the Hopi, Ute Mountain, and Zuni Governments, sent a letter to Chairmen Bishop and Chaffetz, writing: “Our strenuous efforts to participate in the PLI, and related proceedings before that over the course of the past six years, have been consistently stonewalled. We have never been taken seriously. Now 2½ months after submitting our proposal to you, we have received no reactions at all from you on your proposal. The promised draft PLI was never delivered. All of this is consistent with PLI's repeated failures to meet deadlines. Our five sovereign tribal nations, and our carefully-drafted comprehensive proposal, deserve far more than that. ... We don't feel we can wait any longer before engaging with the Obama Administration concerning our proposal in the hope that they will advance our proposal via the Antiquities Act.”
- (12) On June 29, 2016, the Bears Ears Inter-Tribal Coalition sent a letter to the Utah Delegation, writing: “As you know, we withdrew from the Public Lands Initiative process late last year. We set out in detail our reasons for withdrawing in a letter to you dated December 31, 2015. In the intervening months, your approach toward our proposal and our coalition have reaffirmed the concerns expressed in our December letter. ... We are satisfied that a Bears Ears National Monument proclaimed by President Obama under his authority granted by the Antiquities Act presents the best opportunity to protect the

Bears Ears landscape and assure a strong Native American voice in monument management. We hope you will join us in supporting a Bears Ears National Monument.”

- (13) On July 23, 2016, the Bears Ears Inter-Tribal Coalition sent a letter to Chairman Bishop and Chairman Chaffetz, writing: “We do not see how further discussions can be productive. The basic problem is that our two sides hold dramatically different views on what should be done in the Bears Ears area. Our proposal calls for strong conservation measures and deep involvement of the Tribes in monument management. The current version of the PLI is highly protective of mining and other forms of development to the detriment of land protection.”
- (14) On September 20, 2016, 31 current and former local officials and candidates sent a letter to President Obama supporting a Bears Ears National Monument designation, writing: “There is a false media narrative around the effort to protect Bears Ears that would have you believe that Utah elected officials are unanimously opposed to a Bears Ears National Monument. We hope this letter puts that narrative to rest and we ask that you use your authority under the Antiquities Act to protect this land for all people, for all time.”
- (15) On October 4, 2016, Gene Davis, the Utah Senate Minority Leader, sent a letter to President Obama supporting a Bears Ears National Monument, writing: “Now it’s the time to take action. With little chance of Congress protecting the Bears Ears region, you should use your authority to establish the Bears Ears National Monument and ensure permanent protection of this unique region. In doing so, you would be heeding the calls of Native American tribes, labor unions, veterans, business owners, faith leaders, sportsmen, recreationalists, conservationists, and many others who wish to see these lands protected and appropriate access ensured.”
- (16) On March 12, 2015, the Navajo Nation Council’s Committee passed a resolution supporting a Bears Ears National Monument Designation, making clear that “the Navajo Nation includes communities in San Juan County, Utah,” and warning that “to prevent this rapid destruction of lands in the San Juan County region important to Native peoples, formal protection as a national conservation area or national monument is required.”
- (17) On November 30, 2016, a coalition of 18 national, regional, and local conservation groups sent President Obama a letter supporting a Bears Ears monument designation, writing: “We urge you to proclaim a Bears Ears National Monument this year. ... Despite its vast cultural significance, inadequate legal protections and insufficient funding have resulted in the degradation and destruction of these archaeological treasures from illegal looting, mismanaged recreational use, and inappropriate energy development. The designation of this new national monument, including adequate funding, will provide the enhanced protections required to protect this national treasure.”
- (18) On September 9, 2016, the Friends of Cedar Mesa sent a map to Secretary Jewell showing a problematic land trade near Bluff, Utah that was proposed in Chairman Bishop’s PLI legislation on behalf of SITLA (School and Institutional Trust Lands Administration).

- (19) On January 6, 2016, Friends of Cedar Mesa, a conservation group based in Utah, emailed Neil Kornze, Director of the Bureau of Land Management, to request a meeting, writing: "We would like to speak briefly with you about ongoing damage to archaeological resources, the critical importance of this area to recreation enthusiasts from around the world, and our thoughts about possible legislative and administrative actions to conserve this area, including collaborative management ideas."
- (20) On October 11, 2016, Bruce Adams, Commissioner of San Juan County, emailed the Executive Assistant to Nicole Buffa to confirm a meeting to discuss alternatives to a monument designation, writing: "Our primary mission is to invite agencies from the Department of Interior to participate in revision of the San Juan County Master Plan and positively touch a few points in the report that we believe the various agencies may wish to consider going forward."
- (21) On March 30, 2016, Secretary Jewell's Deputy Chief of Staff emailed Senator Hatch's staff to thank them for meeting, writing: "Thank you again for the impromptu meeting with [redacted] and me a few weeks ago! I'm glad we had the chance to sit down and connect and hope that we are able to speak again soon."
- (22) On November 3, 2016, a staffer for Senator Mike Lee sent an email to inform Secretary Jewell's Deputy Chief of Staff of a meeting Senator Lee's office had with the Bears Ears Coalition, writing: "The conversation went well. Both sides were conciliatory and regretted the current state of affairs. Much of the meeting was necessarily spent atoning and promising to work towards our shared goal: protecting Bears Ears."